

The Consumer Protection and Antitrust Bureau (Bureau) is responsible for ensuring that the consumer protection and antitrust laws of New Hampshire are enforced and that trades and businesses operating within the State of New Hampshire are conforming to governing statutes. The Bureau is responsible not only for the investigation, regulation and enforcement of the Consumer Protection Act and the antitrust laws, but also for more than thirty other statutes. The other statutes include such laws as Fair Debt Collection, Automated Telemarketing Calls and the Condominium and Land Sales Full Disclosure Acts. In addition, the Administrative Prosecutions Unit (APU) is attached to the Bureau. At the present time, there are 15 staff members and 15 volunteers.

## Direct Citizen Services

One of the Bureau's primary responsibilities is directly assisting consumers with their questions and problems. The Bureau accomplishes this with a Consumer Hotline, a voluntary mediation program, public education and outreach programs, informative brochures, a newsletter, an informative website and direct intervention.

### Telephone Hotline

The Bureau supports a Consumer Hotline dedicated to receiving telephone inquiries from consumers. The Bureau's paralegals, secretaries, attorneys and volunteers responded to approximately 30,000 telephone calls during the biennium. The Consumer Hotline is staffed between 8:00 a.m. and 5:00 p.m. Monday through Friday and can be reached at 888-468-4454.

### Consumer Complaints

The Bureau receives and responds to thousands of written complaints from consumers in New Hampshire and other states. During the biennium, over 6,500 written complaints were received and processed. Every complaint is read and reviewed and a decision is made on how best to handle the complaint. In the first instance, if appropriate, the complaint will be referred to the Bureau's Mediation Program. Other cases are investigated for civil or criminal prosecution. If the Bureau is unable to assist a consumer, the complaint may be referred to other state or federal agencies, such as the Federal Trade Commission, Attorneys General Offices in other states, or referred to private attorneys and/or small claims court.

The top 10 complaint categories in the last biennium were:

1. Automobile purchases and rentals
2. Home construction and repair
3. Internet goods and services
4. Telecommunications/slamming/cramming
5. Predatory lending
6. Mail order goods and services
7. Telemarketing
8. Furniture and home furnishing sales
9. Retail sales generally
10. Fuel and energy purchases

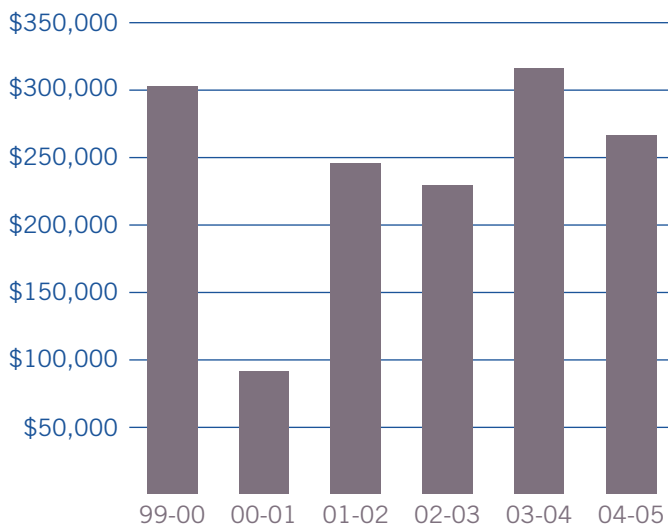
### Mediation Program

The Bureau has utilized a voluntary Mediation Program since 1992. The Bureau recruits and trains qualified non-lawyer volunteers as Consumer Affairs Specialists. These Specialists help fellow citizens and businesses resolve many kinds of consumer

complaints. The Bureau's paralegals work with the Consumer Affairs Specialists to handle the bulk of the cases in the Mediation Program. The Mediation Program allows the Bureau to reach out to and assist thousands more consumers and businesses than it would otherwise be able to assist. The Mediation Program is voluntary on the part of the businesses. However, it is generally well received by businesses and cooperation and participation is high. In the biennium, 15 volunteers worked for the Mediation Program, each working approximately six hours per week, answering telephone calls and mediating individual cases.

In the biennium, approximately 4,100 cases were referred to the Mediation Program. The total restitution recovered for consumers in the form of money, goods or services for Fiscal Year 2004 was \$315,607, and \$265,762 in Fiscal Year 2005, for a total of \$581,369 in the last biennium. This represents an increase of approximately \$108,000 over the last biennium. Consumer restitution recovered for fiscal year 2005 ranged from \$8.99 to \$10,500.

**Consumer Restitution Recovered**  
Fiscal Years 2000–2005



The work of the Bureau's Volunteers is invaluable. Many consumers would not have received assistance but for the dedication and commitment demonstrated by the Volunteers. Their success rate in resolving cases is outstanding.

#### Public Education and Outreach

The Bureau has successfully continued its goal of increasing the number of outreach programs offered to New Hampshire citizens throughout the State. Oftentimes, the Bureau partners with local police departments and other agencies for its presentations. In fiscal year 2004, with the help of Bureau Volunteers, the Bureau presented 19 outreach programs. That number was more than doubled in fiscal year 2005 with 40 outreach presentations. The Bureau's outreach includes programs specifically tailored for high school students, senior citizen groups and business organizations. With the increase in identity theft complaints, many of the Bureau's outreach programs were directed at preventing identity theft, and the steps identity theft victims should take to minimize the damage.

#### Consumer Protection Website

The Bureau also maintains an informative website for consumers—<http://www.doj.nh.gov/consumer>. Not only does it contain the complete *New Hampshire Consumer Sourcebook*, but it also lists all of the press releases and consumer alerts issued by the Attorney General's Office. During fiscal year 2005, the Bureau began publishing a newsletter, *The Consumer Advocate*, which is available on the Bureau website. Consumers may also download complaint forms and telephone log sheets to help them monitor telemarketing calls. All registration forms for condominium and land sales can be downloaded as well. Consumers may also reach the FTC's Do Not Call Registry from this site.

### Enforcement

#### Administrative Subpoenas

Under the Consumer Protection Act, the Attorney General has the authority to subpoena businesses, documents and witnesses whenever it believes a violation of the Consumer Protection Act has occurred. During the biennium, the Bureau issued 49 subpoenas.

#### Civil Actions

During the biennium, the Bureau engaged in or concluded seven consumer protection civil suits involving a wide variety of unfair and/or deceptive trade practices.

#### Criminal Prosecutions/Enforcement

Criminal prosecution of consumer protection violations continues to be a priority of the Bureau. The nature of the numerous complaints received by the Bureau has mandated that it focus its efforts particularly on home contractors.

#### Multi-State Litigation/Settlements

During the biennium, the Bureau participated in eleven multi-state actions in conjunction with many other states. The actions involved both antitrust violations and unfair and deceptive trade practices. The resulting Settlement Agreements secured close to \$190,000, in addition to money paid directly to consumers as a result of the settlements.

#### Tobacco Activities

In 1998, New Hampshire, along with 46 other states and 4 territories joined in the Master Settlement Agreement (the MSA) to resolve ongoing litigation against the four major tobacco companies. The best known

#### Court Filings

Case	Award	Penalties	Att'y Fees	Total <sup>1</sup>
NH v. 3B Holdings	\$2,468.95	\$7,046.85	\$6,676.35	\$16,192.15
NH v. CigTec Tobacco LLC	\$285,059.01	\$855,178.23	\$10,747.05	\$1,150,984.29
NH v. GTC Industries, Ltd	\$206,024.30	\$618,072.82	\$2,117.50	\$824,274.62
NH v. CigTec Tobacco LLC	\$318,920.72	\$1,145,762.16	\$622.50	\$1,528,305.38
NH v. GTC Industries, Ltd	\$206,024.30	\$618,072.90	\$1,091.25	\$825,188.45
NH v. Xuxi Hongta Changchun	\$484.25	\$0.00	\$5,365.00	\$5,849.00

In addition, cases against N.V. Sumatra, GTC Industries, Ltd. and SEKAP SA are pending in court.

<sup>1</sup>Due to the inherent difficulty of enforcing judgments against overseas defendants, many of the funds awarded by the court are as yet uncollected

provision of the MSA is where the participating manufacturers (OPMs) agreed to accept their financial responsibility to reimburse the settling states for their costs in the treatment of tobacco-related illnesses. This results in payments of approximately forty million dollars to New Hampshire every year. These payments, however, are not automatic. A complex formula is used every year to determine the amount that the State will receive. Among the factors that have an effect on the final payment are nationwide sales of tobacco products, the percentage of sales by OPMs compared to the sales by non-participating manufacturers (NPMs), or those small tobacco producers who did not join in the MSA, and the rate of inflation and other factors.

The MSA requires each settling state to enact a statute requiring NPMs to establish an escrow account in favor of each state and to pay into the escrow account a certain amount, usually between one and two cents, for each cigarette sold in the state. New Hampshire has enacted such statutes. As a result, the State retains a significant enforcement burden, which can be seen in the compliance and litigation efforts set out below.

#### *MSA Compliance*

Quarterly reporting (see Legislation, below), while very effective in increasing the State's ability to ensure compliance with the MSA, also requires significantly more resources. However, the results are worthwhile. Under the terms of the MSA, a state that fails to diligently enforce its escrow statutes will find that its annual payments are at risk. Quarterly enforcement has facilitated the Bureau's diligent enforcement.

Currently, over 300 different brands of cigarettes are sold in New Hampshire by 56 different manufacturers through 77

different wholesalers. Of these manufacturers, 31 are NPMs whose compliance with the State's escrow statutes it is the Bureau's duty to ensure.

Toward this end, each quarter, all NPMs are required to report their sales in New Hampshire to the Bureau. Wholesalers who sell in New Hampshire are likewise required to report NPM product sales in New Hampshire to the Bureau. The NPM and wholesalers' numbers are compared, and then they are compared with information from the Department of Revenue Administration regarding excise tax payments. If these numbers are not reasonably close, further inquiries are made in an effort to determine the cause of the discrepancy. Once the actual sales volume of each NPM is verified, the escrow funds are evaluated to ensure that adequate funds have been placed into escrow by each NPM. Should it be determined that an NPM has failed to abide by its escrow obligations, a warning letter is issued. If the NPM does not respond adequately, the Bureau will file suit to enforce the escrow statute. The court actions in the table on the previous page have been initiated or litigated in the past biennium.

#### *Assurances of Discontinuance*

The State has entered into Assurances of Discontinuance pursuant to NH RSA 358-A:7 with several national retailers who sell tobacco products. Pursuant to these Assurances, the retailers have agreed to enhance their efforts to avoid tobacco sales to underage purchasers. Among the actions the retailers have voluntarily agreed to establish are mandatory training of all salespersons, the installation of software on cash registers that prompts the input of the purchaser's birthdate when a tobacco product is sold, the placement of tobacco products and ad-

vertisements for such products away from products of interest to minors, mandatory compliance checks, and retraining/termination for employees who violate the sales policies of the retailer. In the past biennium, WalMart and 7-Eleven entered into such Assurances of Discontinuance.

#### *Legislation*

RSA 541-D was enacted, which establishes the directory of tobacco products eligible for sale in New Hampshire due to their manufacturer being in compliance with either the terms of the MSA or, for nonparticipating manufacturers, being in compliance with RSA 541-C, the Escrow Statute. Before a wholesaler may sell a product in the State, that wholesaler is required to check the Directory to determine whether that product may legally be sold in the State. This is significantly more efficient and cost-effective than the prior system, which required the State to litigate after the fact when a wholesaler sold nonconforming product in the State.

The "Allocable Share Amendment" was passed to close a loophole in the Escrow Statute, which served to encourage nonparticipating manufacturers to identify one or two small states as the market for the bulk of their sales. Because ultimately the escrow obligation of each manufacturer was based upon the nationwide sales of the manufacturer's products, by concentrating sales in only one or two small states, a manufacturer could escape its obligation to escrow funds. One manufacturer in particular managed to reduce its overall escrow liability in New Hampshire from over three million dollars to less than thirty thousand dollars by making use of the loophole contained in the law prior to the amendment.

Quarterly reporting requirements have recently been established, greatly increasing compliance

with the MSA by allowing a “rapid response” by the State in the event a manufacturer fails to meet its obligations under the MSA. Prior to quarterly reporting, manufacturers and wholesalers were required to report their sales and escrow payments annually. Thus, the manufacturer could be behind on its escrow obligations for a year or more before the State would be alerted to the deficiency and take action. With quarterly reporting, such arrearages are detected before the year is out, creating a more efficient enforcement process.

### **Antitrust**

The Bureau’s antitrust enforcement activities have generally been undertaken in concert with other state antitrust bureaus. Most antitrust actions are undertaken through the States’ authority to enforce federal antitrust laws as well as native jurisdiction under State antitrust statutes. Also, the scope of an antitrust enforcement action is nearly uniformly multistate, as most violations and violators exist across state borders. By pooling resources, states have found that they can prevail against large, even multinational, corporations when they violate antitrust statutes.

#### *Actions Against Pharmaceutical Manufacturers*

Much activity has recently taken place in the pharmaceutical field. The pharmaceutical industry consists of two types of manufacturers - those who are research-based and the generic manufacturers. The research-based manufacturers are those who conduct research with the hopes of developing new and profitable drugs. The generic manufacturers wait for the patents to expire on new drugs and then make low-priced copies of those drugs.

Therefore, the research-based manufacturers’ ability to earn a profit on their discoveries diminishes when their patent protection lapses. As a result, there have been several attempts to extend patent protection beyond the patent’s statutory time limit. Research-based pharmaceutical manufacturers have also paid generic manufacturers not to produce drugs when the patent expires. These activities are attempts to maintain a previously legal monopoly, after the legal protection created by the patent had expired. This is a violation of antitrust laws, and the states, along with the federal government, have been vigilant in prosecuting this activity. The Bureau has participated in investigations involving the following drugs and manufacturers in the last biennium: Cardizem, Purdue Pharma, Relafen, Remeron, Perrigo, Alparma, Taxol and BuSpar.

#### *Non-Pharmaceutical Antitrust Matters*

The Bureau has also undertaken, on a multistate basis, antitrust investigations and actions, primarily based on charges of either price fixing or monopolization, against entities other than pharmaceutical manufacturers. These are: Bentley Systems, casket manufacturers and funeral homes, Dairy Farmers of America, First Data Bank, music CD sales, and Salton Industries. The Bureau was involved in several investigations of proposed mergers, including Verizon and SBC, NewsCorp and Hughes, and Hood Milk and National Dairy Holdings.

#### *NH-Specific Antitrust Matters*

Not all antitrust matters are issues that cross state lines, however. In the past biennium, the Bureau has been involved in investigations of mergers that relate to businesses inside New Hampshire. These have primarily been healthcare-related mergers. For example, the affiliation between Valley Regional Hospital

and Dartmouth-Hitchcock was reviewed before the agreement was executed.

The Bureau has also pursued antitrust cases without multistate involvement. In the last biennium, the Bureau filed in Merrimack County Superior Court assurances of discontinuance from Sterling Jewelers, owners of Kay Jewelers and Belden Jewelers, and Simon Property Group, arising out of actions that resulted in the eviction of a local jeweler from a Simon-managed shopping mall located in New Hampshire.

### *Registration/Regulation*

#### **Condominium and Land Sales**

During the biennium, the Bureau issued 236 certificates of registration or exemptions for subdivisions under the Land Sales Full Disclosure Act and 207 certificates of registration or exemption under the Condominium Act. The State derived \$300,480 in revenues from the application fees collected by the Bureau in connection with these regulatory activities. Total registrations increased by 17% over the last biennium. Four Assurances of Discontinuance were filed with the Merrimack County Superior Court for selling lots prior to registering with the Bureau.

#### **Health Clubs**

During the biennium, 395 health clubs were registered, an increase of approximately 50% over the last biennium. The Bureau aggressively sought out health clubs that were not complying with the statutory registration requirement. Fees from registration of health clubs totaled \$39,500.

#### **Distributorships**

Eight distributorships were registered during the biennium. The types of distributorships registering included vending machine, greeting card and espresso

machine distributors. Fees from registration of distributorships totaled \$400.

### Other Registrations

Eight automatic telephone dialers registered with the Bureau during the biennium. Those telemarketers using pre-recorded messages must file and pay a \$20.00 filing fee. Two buying clubs registered with the Bureau during this biennium. Five new discount prescription drug cards registered with the Bureau during the biennium. Eighty-eight independent living retirement communities have registered with the Bureau this biennium.

RSA 151:31 requires all hospitals in the State of New Hampshire to file an annual report with the Bureau detailing the relationship between the hospitals and Physician Hospital Organizations. It also requires the Bureau to

report a summary of the results annually to the legislature. Twenty-six New Hampshire hospital and health care provider institutions have filed reports. The Bureau submits an annual report to the legislature based on the information received from the hospitals.

### *Administrative Prosecutions Unit*

The Bureau's Administrative Prosecutions Unit (APU) regularly investigates and prosecutes professional misconduct cases before the following New Hampshire licensing bodies: the Board of Allied Health Professions; the Board of Chiropractic Examiners; the Board of Dental Examiners; the Joint Board of Licensure and Certification; the Board of Medicine; the Board of Mental Health Practice; the Board of Pharmacy;

Board of Podiatry and the Board of Veterinary Medicine. During the biennium, the APU also investigated and/or prosecuted cases for the Board of Accountancy; the Real Estate Appraiser Board; the Board of Barbering, Cosmetology and Aesthetics; and the Board of Nursing Home Administrators.

Two attorneys, an investigator and a secretary staff the Administrative Prosecutions Unit. The table below summarize cases handled by the APU over the last biennium.

In those cases that were heard by an administrative board at which an APU attorney acted as hearing counsel, two resulted in reprimand or required the licensee to take remedial measures, six resulted in license suspension or revocation and one resulted in a finding of no professional misconduct. Settlements after

## Consumer Protection and Antitrust Bureau *Biennium At-A-Glance*

Number 1 Consumer Complaint	Automobile purchases & rentals
Consumer Hotline	30,000 calls
Written Consumer Complaints	6,500
Outreach programs	59
Consumer Restitution in Mediation Program	\$581,369
Civil Prosecutions, Restitution Ordered	\$352,899
Restitution Obtained From Multi-State Actions	\$190,000
Total Damages, Attorney Fees and Penalties Awarded Against Tobacco Manufacturers for Violating Master Settlement Agreement	\$4,350,794
Settlement for In-State Antitrust Action	\$45,000
Condominium and Subdivision Applications Processed	443
Condominium and Subdivision Fees Collected	\$300,480
Health Clubs Registered	395
Number of Cases Opened in Administrative Prosecutions Unit	215
Number of APU Cases Resulting in License Surrender or Revocation	21
Number of APU Cases Resulting in Confidential Letters of Concern	31
Number of APU Cases Resulting in No Discipline	53
Total Fines Issued in APU Cases	\$85,400

investigation resulted in twenty-one license surrenders or revocations, thirty-one confidential letters of concern and fifty-three findings of no discipline warranted. In addition, the boards assessed \$85,400 in fines against licensed professionals in the biennium in cases involving APU lawyers and investigators.

The APU opened 215 cases in Fiscal Years 2004 and 2005. The largest number were opened for the Board of Medicine (90), the Board of Mental Health Practice (30), and the Board of Pharmacy (30).

A summary of a sampling of the matters handled during the biennium by the APU for the client boards follows:

#### *Professional Engineers Board*

A licensed professional engineer was accused of misconduct in using confidential information and the resources of his former employer to start up his own firm and divert clients to the new firm. The APU negotiated a settlement agreement with the engineer who received a reprimand and was required to complete 60 hours of ethics training. In addition, the engineer's license was suspended for six months (stayed for one year) and he was assessed an administrative fine of \$10,000.

#### *Physical Therapy Governing Board*

APU assisted the Board in the investigation and prosecution of a case against a physical therapist after a client alleged that his physical therapist had engaged in fraudulent billing and had failed to provide treatment records upon request. After a hearing at which an APU attorney acted as hearing counsel,

the Board ordered that the physical therapist's license be revoked for one year, that he pay an administrative fine of \$2,000 and that he complete an additional 15 hours of continuing education in his field.

#### *Occupational Therapy Governing Board*

The Board was notified that an occupational therapist had been fired by her employer for fraudulent billing and improper charting of visits to home-bound clients. APU assisted the Board with the investigation of this case and negotiated a settlement agreement with the occupational therapist. The settlement agreement included a reprimand and required the therapist to pay a \$500 administrative fine, complete a course in healthcare ethics and complete a computer training course.

#### *Respiratory Care Practitioners Governing Board*

A respiratory therapist's license was revoked and he was ordered into substance abuse treatment after he was caught stealing drugs from the hospital where he worked.

#### *Board of Podiatry*

A podiatrist agreed to voluntarily surrender his license in the face of allegations that he conducted two surgeries, where one would have been sufficient, in order to bill the insurance company twice. In addition, he was accused of failing to use sufficient sterilization procedures resulting in a bone infection after surgery.

#### *Board of Dental Examiners*

After a two-day hearing, the New Hampshire Board of Dental Examiners found that a dentist had failed to comply with Center

for Disease Control (CDC) and American Dental Association (ADA) Guidelines regarding infection control practices. The dentist's license was suspended and he was required to hire a private consultant to ensure that his practice meets all health and safety guidelines prior to its reopening.

#### *Board of Medicine*

APU investigated and prosecuted several cases in which doctors licensed in New Hampshire were accused of sexual misconduct with patients or former patients. In one case, APU assisted the Board of Medicine in the issuance of an emergency suspension of license against a doctor of osteopathy when an investigation revealed that the doctor had engaged in sexual misconduct with one of his former patients. Prior to hearing, APU negotiated a settlement agreement whereby the doctor consented to the permanent revocation of his license to practice medicine in the State of New Hampshire.

#### *Board of Veterinary Medicine*

APU investigated two separate complaints from clients alleging that a doctor of veterinary medicine failed to provide competent advice and treatment to their pets. In one case, it was alleged that the doctor failed to provide antibiotics or pain medication for a dog after a surgical procedure. In the second case, the doctor failed to treat a dog that had consumed an ultimately lethal amount of chocolate. At the conclusion of APU's investigation, the veterinarian entered into a settlement agreement the terms of which included a reprimand, 10 hours of continuing education, and unannounced inspections for one year.